R E P O R T R E S U M E S

ED 011 409 EA 000 530

LEGAL IMPLICATIONS OF CONCERTED ACTION OF TEACHERS.

BY- BUTLER, HENRY E., JR.
ARKANSAS UNIV., FAYETTEVILLE, COLL. OF EDUCATION

UNIVERSITY COUNCIL FOR EDUCATIONAL ADMINISTRATION

PUB DATE 66

EDRS PRICE MF-$0.09 HC-$0.40 10P.

DESCRIPTORS- *COLLECTIVE NEGOTIATION, *STATE LEGISLATION, *TEACHER ASSOCIATIONS, *BOARDS OF EDUCATION, TEACHER STRIKES, BIBLIOGRAPHIES, COLUMBUS, FAYETTEVILLE

THE AUTHOR STATES THAT GROWING DEMANDS BY ORGANIZED TEACHERS FOR NEGOTIATION CONCERNING EMPLOYMENT CONDITIONS AND POLICY FORMULATION HAVE BEEN ACCOMPANIED BY A WILLINGNESS TO ACCEPT SUCH BARGAINING THROUGH PROCEDURES WHICH DO NOT INTERRUPT ORDERLY SCHOOL OPERATION. TRADITIONAL LEGAL AUTHORITY OF LOCAL BOARDS OF EDUCATION TO MAKE UNILATERAL POLICY DECISIONS IS GIVING WAY TO A DIVERSE SET OF NEGOTIATION PROCEDURES BASED MORE UPON DISCRETIONARY ACTION OF LOCAL BODIES THAN UPON LEGISLATION. BOARDS OF EDUCATION WILL ENGAGE MORE FREQUENTLY IN COLLECTIVE NEGOTIATIONS, BOTH BY VOLUNTARY ACTION AND BY PRESSURES EXERTED AGAINST THEM. ALTHOUGH TEACHERS MAY NOT LEGALLY STRIKE IN ANY STATE, TEACHER ORGANIZATIONS ARE CONTINUING TO BROADEN THE AREA OPEN TO NEGOTIATION. UNRESOLVED ISSUES INCLUDE WHETHER STATE LEGISLATION SHOULD BE ENACTED TO ASSURE COLLECTIVE NEGOTIATIONS BY TEACHERS AND WHETHER SUCH LEGISLATION SHOULD APPLY TO ALL PUBLIC EMPLOYEES OR WHETHER PUBLIC SCHOOL PERSONNEL SHOULD BE TREATED AS A SPECIAL CATEGORY. LEGAL DEVELOPMENTS CONCERNING COLLECTIVE NEGOTIATIONS BY PUBLIC SCHOOL TEACHERS WILL BE ESPECIALLY INFLUENCED BY INDIVIDUAL AND CONCERTED ACTION OF PUBLIC SCHOOL ADMINISTRATORS AND BOARDS OF EDUCATION. THE COMPLETE DOCUMENT, "COLLECTIVE NEGOTIATIONS AND EDUCATIONAL ADMINISTRATION," IS AVAILABLE FROM THE UNIVERSITY COUNCIL FOR EDUCATIONAL ADMINISTRATION, 65 SOUTH OVAL DRIVE, COLUMBUS, OHIO 43210, AND FROM DR. ROY B. ALLEN, COLLEGE OF EDUCATION, UNIVERSITY OF ARKANSAS, FAYETTEVILLE, ARKANSAS 72701, FOR $2.50. (JK)

COLLECTIVE NEGOTIATIONS AND EDUCATIONAL ADMINISTRATION

Edited by

Roy B. Allen
University of Arkansas

and

John Schmid
Colorado State College

Published by

College of Education
University of Arkansas

and the

University Council for Educational Administration

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
OFFICE OF EDUCATION

THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL OFFICE OF EDUCATION POSITION OR POLICY.

ED011409
EA000530

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
OFFICE OF EDUCATION

THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL OFFICE OF EDUCATION POSITION OR POLICY.

CHAPTER 5

LEGAL IMPLICATIONS OF CONCERTED ACTION OF TEACHERS

HENRY E. BUTLER, JR.
University of Rochester

The intensified demand by organized teachers to participate in the formulation of policies that affect them, to bargain or negotiate collectively concerning salaries and other conditions of employment,[1] has been accompanied by an increased willingness to have them do so. At the same time, the mandate is clear that this demand be pressed through procedures that do not interrupt the orderly operation of the schools. In no state do teachers have the legal right to strike. The legal implications of the concerted action of teachers are viewed, for the purposes of this paper, primarily as a product of these two forces.

At the present time, there is great diversity among the states in the procedural and substantive rights of teachers and of teacher organizations.[2] This diversity will probably continue, and in many states collective negotiations with teachers will be based on the discretionary action of local boards of education rather than on legislation. It is apparent, however, that existing legislation in a number of states assures teachers the right to engage in collective bargaining or some other type of formal, representative discussion with their employers without clearly defining the subject matter of negotiations, or defining the scope of negotiations so broadly that teacher participation in the formulation of educational policy is implicitly or explicitly assured. In a number of additional states, teacher organizations can be expected to continue their efforts to obtain the enactment of such legislation.

EA 000 530

Whether collective negotiations with public school teachers are conducted on a discretionary basis, or in response to a legislative requirement, developments to date suggest that the concerted action of teachers implies a new relevance of the law to public school administration, and also implies an operational modification of the traditional legal authority of local boards of education to make unilateral policy decisions.

VOLUNTARY ARRANGEMENTS

In the absence of legislation requiring representation elections or the recognition of an exclusive organizational representative of teachers, a number of courts have refused to require boards of education to hold elections or to engage in collective negotiations.[3] If a board of education in its discretion undertakes to hold an election and to engage in collective negotiations, however, it may well find that a variety of litigation ensues.

For example, before the representation election in New York City an appeal was taken to the Commissioner of Education seeking a postponement of the scheduled election. In denying the appeal, the Commissioner made it clear that under New York law, ". . . As before indicated, this plan is a volunteer effort on the part of both the Board and the teachers to solve a problem. It has not legal status."[4] Following the election, a lower court sustained a determination by the Board of Education to combine the social workers and the psychologists in a common unit for purposes of collective bargaining.[5] In another case involving the contract subsequently entered into between the Board of Education and the United Federation of Teachers, a court held that in processing a grievance, under an applicable statute, a teacher could choose a staff member of the City Teacher's Association as her representative, even though the exclusive bargaining agreement limited representation at every stage of the grievance procedure to a union representative or some person other than a member of the minority organization.[6]

Elsewhere in New York, a lower court sustained the right of a resident union officer to inspect school district records to obtain a list of names and home addresses of the classroom teachers of the district for the purpose of send-

ing them campaign literature in advance of a representation election.[7]

This point is, of course, that although boards of education may as a matter of law have discretionary authority to engage or not to engage in collective negotiations, the pressures exerted against them, particularly in large districts, may leave them little operational choice in the matter. Once the process has been initiated, differences of opinion concerning procedures and the rights of the parties to the collective negotiations relationship tend to become matters for negotiated compromise or litigation, not unilateral administrative or school board decision.

THE THRUST OF CONCERTED ACTION

The publicized focus of the concerted action of teachers has been on salaries and other "bread and butter" issues. Legislation already enacted or proposed and collective agreements that have already been concluded, with or without benefit of statute, indicate that a more portentious, long-range object of teacher organizations is participation at the local level in the formulation of educational policy, broadly conceived.

For example, the California statute explicitly states that its purpose is ". . . to afford certificated employees a voice in the formulation of educational policy."[8] The Washington statute provides that:

> Representatives of an employee organization . . . shall have the right, after using established administrative channels, to meet, confer and negotiate with the board of directors of the school district or a committee thereof to communicate the considered professional judgment of the certificated staff prior to the final adoption by the board of proposed school policies relating to, but not limited to, curriculum, textbook selection, in-service training, student teaching programs, personnel, hiring and assignment practices, leaves of absence, salaries and salary schedules, and non-instructional duties.[9]

The Rose Dominick Bill pending in the New York State Legislature would assure the right of teachers through a professional organization to which a majority of them belong:

> . . . to meet with the school authorities of the district and to confer with such authorities . . . on matters of school district policy affecting education, the practice of teaching, or other aspects of professional practice including, but not limited to, curriculum content, teaching methods, facilities for instruction, teaching problems, teaching assignments, compensation for teachers, and other conditions in the school district affecting education and the welfare of pupils.[10]

Agreements that have been negotiated include significant provisions concerning such matters as class size, teaching load, teaching facilities, leaves of absence, teacher assignment and transfer, length of school day, teacher evaluation, grievance procedure, textbook selection, after-school meetings, and the employment of specialists, teacher aides, and clerical employees. Salaries and other financial benefits are covered, to be sure, but many teacher organizations have pointedly and successfully introduced into negotiations items that strongly influence or determine educational policy. It is significant that this development has taken place whether negotiations were discretionary or were required by statute.

It seems clear that teacher organizations define the terms and conditions of their employment broadly. As their definition is accepted in the conduct of negotiations, inevitably the traditional legal powers of boards of education concerning policy are modified operationally regardless of the legal powers expressly assigned to boards of education.

PENDING ISSUES

The collective negotiations movement in public employment generally, and in public education in particular, has developed rapidly. A number of unresolved issues seem certain to receive further legislative attention.

Fundamental is the question of whether legislation having state-wide application should be enacted to assure collective negotiations by teachers. A related question is whether such legislation should apply to all public employees, including teachers, or whether public school personnel should be treated as a special category. Both types of legislation have been enacted, but there is not yet an ex-

periential basis for preferring one type to the other. As teacher organizations press for collective negotiations legislation, their success and the type of legislation enacted apparently depend more on the nature of the political alliances that are formed than on the intrinsic merits of particular proposals.

As indicated earlier, in no state may teachers legally strike. Nonetheless, as teachers have engaged in collective negotiations, on occasion they have resorted to strikes to support their demands at the negotiating table. Existing legislation prohibiting strikes by teachers and other public employees has not been effective in assuring the uninterrupted operation of the schools. The recent, dramatic strike of the transit workers in New York City has focused attention, at least in New York State, on remedial legislation to discourage or prevent strikes of public employees, including public school teachers. The Taylor Committee bill,[11] under consideration by the New York Legislature, includes a number of provisions directed toward a sophisticated solution of this problem, and may point the way toward similar legislation in other states.

The Taylor Committee bill provides for the creation of a Public Employment Relations Board, and intervention by this Board in the event an impasse in negotiations is reached. An impasse is deemed to exist if the negotiating parties fail to reach an agreement at least sixty days before the date for final action on the school district budget. A request for intervention could be made by the public employer or the recognized employee organization; in addition, the Board could intervene on its own motion.

If the Public Employment Relations Board determines that an impasse exists, it would render assistance in resolving the impasse by appointing a mediator. If the impasse continued, it could appoint a fact-finding board, transmit the findings of fact and recommendations of the fact-finding board to both the public employer and the employee organization, and simultaneously make these findings and recommendations public. It could also submit and make public its own recommendations for a resolution of the impasse, or take other appropriate action.

This bill would repeal the Condon-Wadlin law,[12] which has not effectively prevented strikes by public employees, but would continue the state's legislative prohibition against public employee strikes. A public employee organization, found by the Board to have violated this prohibition, would lose its right to recognition either indefinitely, or for a specified length of time. An employee organization which violated a court anti-strike injunction would be subject to fines.

While this proposed legislation is comparable in some respects to legislation already adopted in a few other states, the particular combination of provisions directed toward the continuous operation of the schools and other public services is worthy of note. It seems certain that the development of more effective procedures to avoid or resolve impasses, provide relevant, impartial data to boards of education and teacher organizations, and discourage or eliminate strikes of public school teachers and other public employees will be a major legal concern for the indefinite future.

As the law concerning collective negotiations by public school teachers develops further, it will be influenced in part by the concerted action of teachers and other public employees. It will also be influenced by the tendency of the courts and legislatures to turn to existing precedents in private industry in the absence of clear-cut precedents in the public sector. It will undoubtedly be influenced by many other social and political forces. Perhaps most important for this discussion, it will be influenced by the individual and concerted action of public school administrators and boards of education, in the way they adapt to the changing circumstances that confront them and initiate through education the changes they deem to be in the public interest.

---

[1] For the purposes of this paper, the terms "collective negotiations" and "collective bargaining" are synonymous.

[2] T. M. Stinnett, Jack H. Kleinmann, and Martha L. Ware, *Professional Negotiation in Public Education* (New York: Macmillan Co., 1966), pp. 20-56, 188-99.

[3] *In Re Palumbo*, 56 Labor Relations Reference Manual 2838 (1964); *Board of Education of Kingston Consolidated School District v. Kingston Teachers' Federation et. al.*, Supreme Court of Ulster

County (February 11, 1966). See also *Philadelphia Teachers' Association v. Labrum*, 203 A. (2d) 34 (Pennsylvania, 1964). In Rhode Island, on the other hand, a lower court held that a teachers' organization would be entitled to judicial relief against a board of education if the board wrongfully refused to bargain collectively in good faith regarding teachers' salaries, even in the absence of a statute on the matter. The rationale of the court was that the right of teachers collectively to present demands for just and reasonable remuneration for their services had been recognized by the Supreme Court of the State, and that this right would be worthless unless their demands were received and given reasonable consideration. *School Committee v. Teachers Alliance*, 60 Labor Relations Reference Manual 2314. (1965).

[6] *In the Matter of the Appeal of the Teachers Union of the City of New York et. al.*, Commissioner's Decision #6957, 2 Ed. Dept. Rep. 79, 81 (1961).

[5] *Association of Psychologists in the New York City Public Schools v. Board of Education of the City of New York*, New York Law Journal (May 1, 1963), p. 17.

[6] *Matter of Maurer v. Gross*, 45 Misc. 2d. 13, 256 N.Y.S. 2d 2 (1964).

[7] *Farrell v. Board of Education of City School District of Rochester, N. Y.*, Supreme Court of Monroe County, Memorandum Decision (September 16, 1964).

[8] California Education Code, sec. 13080.

[9] Revised Code of Washington Annotated App. 28.6, sec. 3.

[10] A.I. 2970; S.I. 3340. This bill was introduced as part of the legislative program of the New York State Teachers' Association. The Association has shifted its support to legislation (S.I. 4784; A.I. 6042) subsequently introduced to implement the March 31, 1966, Report of the Governor's Committee on Public Employee Relations (the Taylor Committee).

[11] S.I. 4784; A.I. 6042.

[12] New York Civil Service Law, sec. 108. This law, if invoked, imposes severe penalties on individual public employees who strike.